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84170/0002

June 23, 2014

**VIA E-MAIL AND  
HAND DELIVERY**

Kent L. Jones, P.E.  
State Engineer  
Division of Water Rights  
1594 West North Temple, #220  
Salt Lake City UT 84114-6300

**Re: Notice of Imminent Distribution Request on Wolf Creek, Tributary to Ogden River  
and Pineview Reservoir**

Dear Mr. Jones:

We represent Wolf Creek Irrigation Company ("WCIC") in Eden, Utah. We are writing to inform you that WCIC intends to make a priority call on Wolf Creek to exercise its decreed water right when the surface flows fall below WCIC's decreed low flow water right measured at WCIC's continuous measuring device and WCIC's demands exceed the available natural flow. WCIC informs us that flows in Wolf Creek have dropped precipitously, and WCIC expects the priority call to be made within a few days.

WCIC owns Decreed Water Right No. 35-7188 (the "Water Right") for 20.0 cfs high and 9.85 cfs low flows with an 1861 priority date. The Water Right is the earliest priority water right on Wolf Creek. WCIC has actively and continuously used the Water Right during the irrigation season for more than a century. On September 12, 2012, Change Application (a37638) was certificated on the Water Right affirming the Decreed flows and quantity of water at 2,243.0 acre feet for the irrigation of 741.8504 acres and storage of 129.00 acre feet in two ponds. Wolf Creek Water and Sewer Improvement District ("Wolf Creek District") controls approximately 30% of WCIC shares, which it uses to serve 976 existing connections on the east bench of Ogden Valley.

Wolf Creek is the sole source for the Water Right. While many seeps and springs contribute to the flow of Wolf Creek, three main streams join upstream of WCIC's point of diversion: Wolf Creek, which flows from the base of James Peak, the South Fork of Wolf Creek, which runs north to south along the east side of the Highway 158 from Powder Mountain Ski Resort to Eden, and the Right Fork of Wolf Creek, sometimes referred to as "Lefty Creek."

In all but the highest runoff years, flows in Wolf Creek naturally diminish as the summer progresses. Usually by July, WCIC must cut flows to its shareholders, including to Wolf Creek District. This year is no exception. What has changed is the increased out of priority diversions

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of surface water upstream of WCIC's point of diversion. There is no storage on Wolf Creek above WCIC's point of diversion that WCIC can release to supplement natural flows making up the Water Right.

Beginning in 1970, the Utah Division of Water Rights began approving surface water rights above WCIC's point of diversion directly on the three tributaries making up Wolf Creek. Five applications are now approved on four surface points of diversion directly contributing to the flows of Wolf Creek and two artesian wells adjacent to Wolf Creek, one of which is a shallow well. Initially, diversions from the approved late priority applications were small. They increased significantly last irrigation season and appear to be continuing now. WCIC believes that all of the out of priority diversions are being made by Powder Mountain Water and Sewer Improvement District ("Powder Mountain District"). The applications are identified below.

- Change Application No. a33723 (35-4514, 35-4515 and 35-4516) referred to as the "Cobabe Change Application." This change application authorizes diversion and municipal use of 13.55 acre feet of water. Diligence Claims filed in 1970 underlying the Cobabe Change Application claim a priority of 1900. The present Cobabe Change Application has a 2008 priority. The sources for the Cobabe Change Application are Pizzel Springs Nos. 1, 2 and 3, located directly in and tributary to the South Fork of Wolf Creek.
- Exchange Application No. E467 (35-6124).\* This 4 acre feet Exchange was approved in 1971 on the Pizzel Springs.
- Exchange Application No. E1273 (35-6712).\* This 30 acre feet Exchange was approved in 1978 from the Pizzel Springs and a shallow well near Pizzel Spring No. 2, referred to as the "Cobabe Well."
- Exchange Application E4715 (35-11995).\* This 400 acre feet Exchange was approved in 2006 on the Pizzel Springs and a spring in the Right Fork of Wolf Creek, known as "Lefty Spring," the Cobabe Well, a second existing well and thirteen other underground points of diversion which have not been developed. Lefty Spring is a main source for Lefty Creek and contributes a significant amount of water to Wolf Creek above WCIC's point of diversion.
- Exchange Application E4803 (35-12099).\* This 100 acre feet Exchange was filed on the Pizzel Springs and the Cobabe Well. It was approved in 2009 but had its priority reduced to 2014.
- \*All Exchange water under E467, E1273, E4715 and E4803 is released from Pineview Reservoir, at a point miles downstream from WCIC's point of

diversion, and as such, it is unavailable to replace water diverted upstream of WCIC's point of diversion.

Any water diverted under the above water rights directly diminishes the flows in Wolf Creek by the amount pumped. The pumped amount would have been available to meet WCIC's Water Right. WCIC's decreed Water Right includes a vested interest in the sources of Wolf Creek such that no other diverter may interfere with those sources and flows in a way that diminishes water available to meet WCIC's Water Right.

When Wolf Creek flows at WCIC's point of diversion and continuous measuring device fall below its decreed low flow of 9.85 cfs and are insufficient to meet WCIC's demands, we will notify you. We expect this to occur in a few days. We request that your office verify the flow measurement at that time and shut off upstream diverters with later priority water rights that have not made compensation arrangements with WCIC so that WCIC may divert the natural flow water available in priority to meet its Water Right. Similar to other sections of the Ogden and Weber Rivers where priority calls are made, WCIC assumes that the priority call would end at the end of the irrigation season or at an earlier time when flows of Wolf Creek increase sufficiently to supply water to the later priority water right owners after WCIC's Water Right is satisfied.

By copy of this letter to the Powder Mountain District, we are notifying it of WCIC's imminent priority call. At this time, the Powder Mountain District has not communicated with WCIC regarding its out of priority water diversions on Wolf Creek. In the event that the Powder Mountain District and WCIC begin discussions and reach an agreement regarding the priority call on Wolf Creek, we will immediately notify your office.

I have attached a copy of a March 1, 2013 letter from WCIC to your office and a May 2, 2014 letter to the River Commissioner to this letter expressing WCIC's concerns about out of priority upstream diversions.

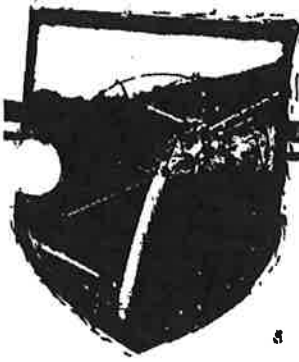
Very truly yours,



Jody L. Williams, Partner

JLW

cc: Powder Mountain Water and Sewer Improvement District  
Wolf Creek Irrigation Company  
Steven E. Clyde



# Wolf Creek Irrigation Company

P.O.Box 761 Eden, Utah 84310

March 1, 2013

Kent L. Jones, State Engineer  
1594 West North Temple, Suite 220  
P.O. Box 146300  
Salt Lake City, UT 84114-6300

Re: Water Rights of Power Mountain

Dear Mr. Jones:

The Wolf Creek Irrigation Company owns Decreed Water Right Number 35-7188, for 20.0 cfs high flow and 9.85 cfs low flow for the irrigation of 768.1 acres of land with a priority date of 1861. The Powder Mountain Resort, which has several names such as Powder Mountain Water and Sewer Improvement District and Western America Holding, LLC have filed and had approved several exchange applications for use of water in the headwaters of the drainage where our water comes from. These exchange applications are E467, E1273, E4715, and E4803. Alvin F. Cobabe, who was the original developer of Powder Mountain Resort, also filed three diligence claims, Numbers 35-4514, 35-4515, and 35-4516 upon which Change Application Number a33723 was filed and approved. The priority of these three diligence claims is 1870. The total for all of these applications is 544.132 acre-feet of water.

After having the opportunity to review these applications, the following are our observations and suggestions regarding these applications:

1. All of these applications for Powder Mountain Resort are junior to the water rights of Wolf Creek Irrigation Company.

**RECEIVED**  
MAR 11 2013 CHWC  
WATER RIGHTS  
SALT LAKE



# Wolf Creek Irrigation Company

P.O.Box 761 Eden, Utah 84310

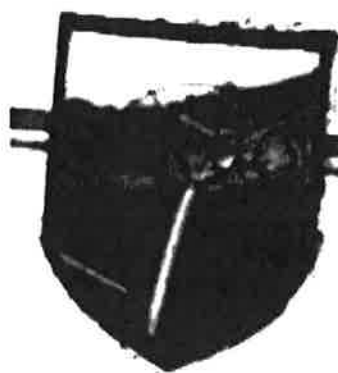
2. The diligence claims are in question because of the amount of water that they would have diverted and the area that they covered. There is no evidence that these claims really existed and even less that these claims are valid.
3. Any diversion of water by Powder Mountain Resort during the time period when we are not receiving our full amount of water either during high flow or low flow time periods impairs the water rights of the Wolf Creek Irrigation Company.
4. The exchange applications that have been filed and approved for use of water at Powder Mountain Resort utilize Pineview Reservoir as the replacement source, which cannot be utilized for replacement to the Wolf Creek Irrigation Company. The Wolf Creek Irrigation Company's diversion is located above Pineview Reservoir.
5. During the irrigation season the flow of Wolf Creek will drop below 9.85 cfs of water. When this occurs, the diversion of water by Powder Mountain Resort must be shut off, because the priority of the water rights of Wolf Creek Irrigation Company are better than any of the water rights of Powder Mountain Resort and no replacement water can make it to the Wolf Creek Irrigation Company.

Given the above observations and suggestions, we request that you place this notice on all of the water rights of Powder Mountain Resort including E467, E1273, E4715, E4803, 35-4514, 35-4515, and 35-4516. We also request that you instruct the Ogden River Commissioner to shut off the water rights of Powder Mountain Resort during the irrigation season when the flow of Wolf Creek drops below 9.85 cfs as outlined in the Ogden River Decree.

Thank you for your attention to this matter.

Sincerely,

Dee R. Staples  
President



# Wolf Creek Irrigation Company

P.O. Box 761 • Eden, Utah 84310

May 2, 2014

Reed Cozens  
Webster & Ogden River Commissioner  
P.O. Box 151  
Layton, UT 84041

Re: Request for Regulation of Wolf Creek

Dear Reed:

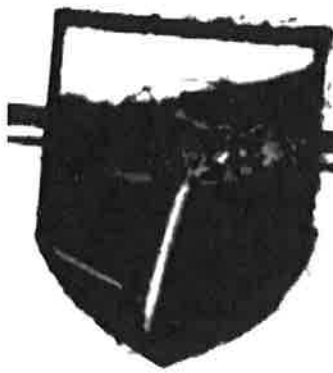
First, thank you for coming out to look at Wolf Creek and our system today. We think it is really helpful to have some first-hand knowledge of the area we are asking you to regulate this summer.

Wolf Creek Irrigation Company owns Decreed Water Right No. 35-7188 for 20.0 cfs high and 9.85 cfs low flows. It is our only water right, and we have depended on it since 1861. Our water right has the earliest priority on Wolf Creek. Wolf Creek Irrigation Company certificated Change Application (a37638) on our water right on September 12, 2012, affirming our Decreed flows stated above and our quantity of water at 2,243.0 acre feet for the irrigation of 741,8540 acres and storage in two ponds.

Our water is delivered through a pressurized system for secondary irrigation. Wolf Creek Water and Sewer Improvement District owns 30% of our shares which it uses to serve its secondary irrigation customers.

Wolf Creek is our only source of water. It is a relatively short creek with many inflows and seeps and springs feeding it. Three main streams make up Wolf Creek upstream of our point of diversion: Wolf Creek (which flows from the base of James Peak), the South Fork of Wolf Creek (which runs along the right side of the road as you drive to Powder Mountain Resort), and the Right Fork of Wolf Creek (which flows into the South Fork about one mile upstream of the confluence of Wolf Creek and the South Fork of Wolf Creek). This tributary is also referred to, on occasion, as Lefty's Canyon. All of the inflows upstream of our point of diversion are required to meet our 9.85 cfs low flow. In most years, Wolf Creek does not make 9.85 cfs at our point of diversion.

Water Right Nos. 35-4514, 35-4515 and 35-4516, based on diligence claims, total 13.55 acre feet according to Change Application (a33723) and are used at Powder Mountain. They are later in priority than our water right. They are pumped from Pizzel Springs Nos. 1, 2 and 3. As you drive up the Powder Mountain Road, you will see that these springs are directly on Wolf Creek. Any flow pumped from them decreases flow in Wolf Creek by the same amount pumped.



# Wolf Creek Irrigation Company

P.O. Box 761 • Eden, Utah 84310

Water Right Nos. E467 (35-6124), 1971 Priority, and E1273 (35-6712) 1978 Priority are also located on Pizzel Springs or in wells adjacent to the springs. Any flow pumped from them decreases flow in Wolf Creek by the same amount pumped.

Water Right No. E4715 (35-11995), 2006 Priority, lists several well points of diversion but also has 4 spring points of diversion, which are Pizzel Springs and other springs directly tributary to Wolf Creek. Any flow pumped from the springs or other surface sources decreases flow in Wolf Creek by the same amount. We also believe that any well water pumped under E4715 decreases our surface flows.

Last year, Wolf Creek Irrigation Company was unable to deliver the full demands of its shareholders during some parts of the irrigation season. During these periods, diversions were made from the upstream surface sources to Wolf Creek under later priority water rights.

Any diversion of water under water rights upstream of Wolf Creek Irrigation Company's point of diversion will decrease our surface flows. We request that you regulate surface sources in Wolf Creek above our point of diversion during the irrigation season to make sure that we are receiving our full 9.85 cfs before any of the upstream diversions with later priority dates are allowed to divert water.

Thank you again for taking time to come see our system and talk to us about this very important water issue. If you have questions after today, please contact me at 801-721-3730.

Sincerely yours,

Dee R. Staples, President  
Wolf Creek Irrigation Company